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In re Application of :
ASANO, Kenji, et al. :
Application No.: 09/856,716 :
PCT No.: PCT/JP99/06615 :
Int. Filing Date: 26 November 1999 :
Priority Date: 27 November 1998 :
Attorney Docket No.: 0230-0160P :
For: LAK ACTIVITY-SCREENING :
MATERIALS CONTAINING LENTINUS :
EXTRACT OF EDODES MYCELIUM :
AND LAK ACTIVITY-SCREENING :
METHODS USING THE EXTRACT :

DECISION ON
PETITION UNDER
37 CFR 1.47(a)

This is a decision on applicants' "Petition Under 37 C.F.R. §1.47(a)," filed in the United States Patent and Trademark Office (USPTO) on 28 January 2002.

BACKGROUND

On 26 November 1999, applicants filed international application PCT/JP99/06615, which claimed a priority date of 27 November 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 08 June 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 26 November 1999, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 28 May 2001 (27 May 2001 was a Sunday).

On 25 May 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 28 June 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 28 January 2002, applicants submitted the instant petition under 37 CFR 1.47(a), which was accompanied by, *inter alia*, a combined declaration and power of attorney executed by inventors Kenji Asano and Yukiko Matsuda, a petition for a five month extension of time and the fee for a five month extension of time.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign or cannot be reached after diligent effort,

(3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1), (3) and (4) have been met. (1) The petition fee of \$130 has been paid. (3) Applicants state that the last known address of non-signing inventor Yutaka Tajima is 10-511, Yaemizo 3-chome; Saga-shi, Saga 849-0935 Japan. (4) The declaration submitted is accepted as complying with 37 CFR 1.47(a).

Item (2) has not been met. It is unclear whether applicants are asserting that the non-signing inventor has refused to sign or whether applicants have been unable to locate the non-signing inventor after a diligent effort. In either situation, applicants are required to supply proof of pertinent facts. 37 CFR 1.47(a). Applicants have not supplied any proof.

It is noted that if this petition is based on the refusal of the inventor to sign the declaration, applicants must demonstrate that a *bona fide* attempt was made to present a copy of the application papers to the inventor. MPEP 409.03(d).

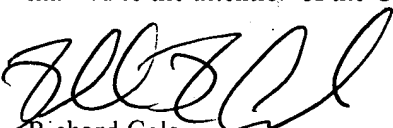
If applicants were unable to locate the inventor after a diligent effort, "a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made." MPEP §409.03(d). "The statement must be signed where at all possible by a person having firsthand knowledge of the facts recited therein." MPEP §409.03(d). Copies of documentary evidence should be submitted. MPEP §409.03(d).

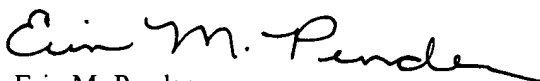
CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.


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